

Appendix 2J: Model Ordinance for Providing Reasonable Accommodation under the Fair Housing Amendments Act

MODEL ORDINANCE FOR PROVIDING REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING AMENDMENTS ACT

The following documents have been prepared for use by cities and counties to provide a process for making reasonable accommodation to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities.

Developed by Mental Health Advocacy Services, Inc.
December 1997
FHIP Grant #FH700G96034

For More Information, Contact:
Kim Savage, Staff Attorney
Mental Health Advocacy Services, Inc.
1336 Wilshire Blvd., Suite 102
Los Angeles, CA 90017
(213)484-1628

INTRODUCTION

The Fair Housing Amendments Act of 1988 prohibits cities and counties from discriminating against individuals with disabilities through land use and zoning decisions and procedures. Not only must local governments not discriminate, but the Fair Housing Act requires that cities and counties provide reasonable accommodation to rules, policies, practices and procedures where such accommodation may be necessary to afford individuals with disabilities equal opportunity to housing.

The model ordinance presented here provides cities and counties with a comprehensive reasonable accommodation procedure, including forms and guidelines, for implementing the federal mandate. Requesting reasonable accommodation is appropriate where changing an existing rule, policy or procedure would provide an individual with a disability equal opportunity to housing of choice or a developer the flexibility necessary for developing housing for individuals with disabilities.

Adopting a reasonable accommodation ordinance will not cure a zoning ordinance which on its face discriminates against individuals with disabilities. Nor will an offer of reasonable accommodation ever excuse a city or county from liability for intentional discrimination. In fact, adopting a reasonable accommodation ordinance is just one of several necessary components for complying with fair housing laws. Other parts include reviewing zoning ordinances for the purpose of identifying and eliminating facially discriminatory policies and procedural requirements and developing trainings to address discriminatory attitudes about individuals with disabilities.

We urge cities and counties to take a comprehensive approach to eliminating discrimination and furthering housing opportunities for individuals with disabilities. By adopting a reasonable accommodation ordinance, reviewing and revising as necessary local zoning ordinances and addressing discriminatory attitudes through trainings, local governments will go a long way in meeting the mandate of fair housing laws.

REGULATIONS GOVERNING REQUESTS FOR REASONABLE
ACCOMMODATION UNDER THE FAIR HOUSING ACT

NOTE: These regulations should be read in conjunction with the attached “Guidelines for Regulations Governing Requests For Reasonable Accommodation Under the Fair Housing Amendments Act of 1988” for a more comprehensive understanding of the regulations and to ensure that the decision making process for requests for reasonable accommodation is in compliance with federal law.

Sec. 1. Purpose

It is the policy of the jurisdiction, pursuant to the Fair Housing Amendments Act of 1988, to provide people with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing. The purpose of these provisions is to provide a process for making requests for reasonable accommodation to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities. In these regulations, “use of housing” includes, but is not limited to, housing related services and the use and enjoyment of the property.

Sec. 2. Definitions

Act. The Fair Housing Amendments Act of 1988.

Applicant. The individual making the request for reasonable accommodation pursuant to these Regulations.

Code. The municipal zoning code or ordinance which sets forth the jurisdiction’s land use and zoning regulations.

Department(s). The department(s) within the jurisdiction responsible for administering requests for reasonable accommodation pursuant to these Regulations.

Designee or Appeals Designee. The person(s), commission or other group of persons designated to make determinations on fair housing accommodation requests pursuant to these Regulations.

Disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities; anyone who is regarded as having such impairment or; anyone who has a record of such impairment. People who are currently using illegal substances are not covered under the Act, unless they have a separate disability.

Sec. 3. Notice to the Public of Availability of Accommodation Process

At all counters where application is made for a permit, license or other authorization for the siting, funding, development or use of housing, notice in the form set forth in Exhibit A shall be prominently displayed advising applicants that they may request a reasonable accommodation of existing rules, policies, practices and procedures. Forms for requesting an accommodation shall be available in all departments where decisions are made regulating the siting, funding, development and use of housing.

Sec. 4. Requesting Reasonable Accommodation

- A. In order to make specific housing available to an individual with a disability, any person may request a reasonable accommodation in the rules, policies, practices and procedures regulating the siting, funding, development or use of housing by completing the "Fair Housing Accommodation Request" form (Exhibit B) and filing it with the Department.
- B. If an individual needs assistance in making the request for reasonable accommodation, the department shall provide the assistance necessary to ensure that the process is accessible to the applicant.
- C. A request for reasonable accommodation in rules, policies, practices and/or procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing; at the outset or during the approval process.

Sec. 5. Review of Requests for Reasonable Accommodation

- A. When a request for reasonable accommodation is filed with the Department, it is referred to the designee for review and consideration. The designee shall issue a written decision within thirty (30) days of the date of the application and may grant the reasonable accommodation request or deny the request. See Notice of Decision on Fair Housing Accommodation Request form (Exhibit C) for designee's use.
- B. If necessary to reach a decision on the request for reasonable accommodation, the designee may request further information from the applicant consistent with the Act, specifying in detail what information is required.
- C. Not more than thirty (30) days after receiving a written request for reasonable accommodation, the designee shall issue a written decision on the request; provided that, in the event that the designee requests further information pursuant to the above paragraph, the running of this period shall be tolled (stopped) until the applicant responds to the request.

Sec. 6. Factors for Considering Requests for Reasonable Accommodation

The designee shall consider the following criteria when deciding whether a requested accommodation is reasonable:

- Is the housing, which is the subject of the request for reasonable accommodation, to be used by an individual protected under the Act?
- Is the request for accommodation necessary to make specific housing available to an individual protected under the Act?
- Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction?
- Whether the requested accommodation would require a fundamental alteration in the nature of a program?

Sec. 7. Written Decision on the Request for Reasonable Accommodation

- A. The designee's written decision on the request for reasonable accommodation shall explain in detail the basis

of the decision, including the designee's findings on the criteria set forth in Sec. 6, above. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth below. The designee's Notice of Decision shall be sent to the applicant by certified mail.

- B. If the designee fails to render a written decision on the request for reasonable accommodation within the time period allotted by Sec. 5, above, the request shall be deemed granted.

Sec. 8. Appeals

- A. Within thirty (30) days of the date of the designee's written decision, the applicant may appeal an adverse decision by filing the Appeal of Denial of Fair Housing Accommodation Request form (Exhibit D).
- B. An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted. If an applicant needs assistance in filing an appeal, the Department shall provide the assistance that is necessary to ensure that the appeal process is accessible to the applicant.
- C. All appeals shall contain a statement of the grounds for the appeal.
- D. Nothing in these Regulations shall preclude an aggrieved individual from seeking any other state or federal remedy available.

NOTICE OF FAIR HOUSING ACCOMMODATION PROCEDURES FOR PEOPLE WITH DISABILITIES

THIS IS NOT A COMPREHENSIVE EXPLANATION OF YOUR RIGHTS UNDER THE FEDERAL FAIR HOUSING AMENDMENTS ACT.

You may request a reasonable accommodation to rules, policies, practices and procedures for the siting, development and use of housing, including housing related services or facilities, if you meet all of the following:

- you have a disability* or the housing is for people with disabilities;
- you may need a reasonable accommodation to existing rules and regulations to have equal opportunity to housing AND;
- your request for accommodation would not be an undue burden on the city or county.

If you believe that you satisfy the above criteria and are entitled to a reasonable accommodation under the Fair Housing Amendments Act of 1988, you may obtain a Fair Housing Accommodation Request form from the front desk. If you need assistance in applying for a reasonable accommodation, the Department will assist you.

*The Fair Housing Act defines “disability” as any of the following: a physical or mental impairment that substantially limits one or more major life activities; a record of having such an impairment or; being regarded as having such an impairment. The Fair Housing Act does not protect individuals currently using illegal substances, unless they have a separate disability.

EXHIBIT A

FAIR HOUSING ACCOMMODATION REQUEST

EXPLANATION OF RIGHTS UNDER THE FAIR HOUSING AMENDMENTS ACT

Before completing the request for a reasonable accommodation, below, please read the following information about who is protected by the Fair Housing Amendments Act and what accommodation may be available under the law. This is not a comprehensive explanation of your rights under the Fair Housing Amendments Act.

Do the protections of the Fair Housing Amendments Act apply to me?

You are protected by the Fair Housing Amendments Act if you have a disability or the housing is for people with disabilities. "Disability" means any one of the following: a physical or mental impairment that substantially limits one or more major life activities or a record of having such an impairment or being regarded by others as having such an impairment. The Fair Housing Amendments Act does not protect an individual currently using illegal substances, unless that person has a separate disability.

What kind of accommodation may I request under the Fair Housing Amendments Act?

If you have a disability or the housing is for people with disabilities, the Fair Housing Amendments Act requires that the city or county provide you with reasonable accommodation in rules, policies, practices and procedures that may be necessary for people with disabilities to have equal opportunity to use and enjoy a dwelling. More specifically, the city or county must provide you with reasonable accommodation in decisions and procedures regulating the siting, funding, development or use of housing, including housing related services or facilities.

How do I request reasonable accommodation from the City or County?

To make a request for reasonable accommodation, answer the questions on the attached one page request form, sign and date the form and return it to the Department. If you need help in answering the questions on the request form, you may ask for assistance from the Department. Your accommodation request will be reviewed by the designee who will issue a written decision on your request within thirty (30) days of the date of the request. If the designee does not issue a written decision within 30 days, your request will automatically be granted. If the designee needs additional information consistent with the Fair Housing Amendments Act to consider your request, the 30 day time period will stop running until you respond to the request.

What if my request for reasonable accommodation is denied?

If your request for accommodation is denied, you may appeal the adverse decision by filing a Notice of Appeal with the appeals designee within thirty (30) days of the decision. You may request reasonable accommodation in the procedure by which an appeal may be conducted. You may also contact your local fair housing or disability rights organization or legal services office for further assistance. Nothing in this accommodation request procedure limits your right to any other available state or federal remedy.

EXHIBIT B

APPLICATION FOR REQUEST FOR REASONABLE ACCOMMODATION

NOTE: If you need help in completing this request form, the Department will assist you. Please contact the person at the counter where you received this request form for assistance.

1. Name of Applicant

Telephone Number

2. Address

3. Address of Housing At Which Accommodation Is Requested

4. Describe the accommodation you are requesting and the specific regulation(s) and/or procedure(s) from which accommodation is sought.

5. Give the reason that the reasonable accommodation may be necessary for you or, the individuals with disabilities seeking the specific housing, to use and enjoy the housing. You do not need to tell us the name or extent of your disability or that of the individuals seeking the housing.

6. If we have questions about your request for reasonable accommodation and you would like us to contact someone assisting you with this request, instead of you, please give us that person's name, address and telephone number.

7. Signature of Applicant _____ Date _____

**PLEASE ATTACH ANY DOCUMENTS THAT YOU THINK SUPPORT YOUR REQUEST FOR
REASONABLE ACCOMMODATION AND WOULD ASSIST US IN CONSIDERING YOUR
REQUEST.**

NOTICE OF DECISION ON FAIR HOUSING ACCOMMODATION REQUEST

1. Date of Application: _____

2. Date of Decision: _____

3. The request for a Fair Housing Accommodation is:

_____ Granted _____ Denied (See Notice below re right to appeal decision.)

4. The reasons for this decision are as follows:

5. The facts relied on in making this decision:

Signature of Designee _____ Date _____

NOTICE: If your request for accommodation was denied, you may appeal the Designee's decision to the Appeals Designee within thirty (30) days of the date of this decision. To file an appeal, complete and file an Appeal of Denial of Fair Housing Accommodation Request form with the Department. You may request reasonable accommodation in the procedure by which an appeal may be conducted.

EXHIBIT C

APPEAL OF DENIAL OF FAIR HOUSING ACCOMMODATION REQUEST

NOTICE: PLEASE ATTACH TO THIS APPEAL FORM (1) A COPY OF YOUR FAIR HOUSING ACCOMMODATION REQUEST ALONG WITH ANY ATTACHMENTS SUBMITTED WITH THE REQUEST AND (2) THE NOTICE OF THE DECISION DENYING YOUR ACCOMODATION REQUEST.

1. Date of Adverse Decision: _____

2. Date Appeal Filed: _____

3. State why you think the denial of your request for accommodation was wrongly decided:

4. Provide any new information, facts or documents that support your request for accommodation:

5. Signature _____ Date _____

EXHIBIT D

GUIDELINES FOR REGULATIONS GOVERNING REQUESTS FOR REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT

Sec. 1. Purpose

The Fair Housing Amendments Act of 1988 (hereafter “the Act”) prohibits local governments from making housing opportunities unavailable to people with disabilities through discriminatory land use and zoning decisions. The Act creates an affirmative duty to “make reasonable accommodations in rules, policies, practices, or services when accommodation may be necessary to afford such person[s] equal opportunity to use and enjoy a dwelling.”¹

When the jurisdiction considers an application or proposal for the siting, funding, development or use of housing in which people with disabilities are likely to reside or when the jurisdiction applies existing codes, regulations, or other standards to such housing, the jurisdiction must comply with all applicable fair housing laws and administer local policies, procedures and practices in a manner that affirmatively furthers those laws.²

In addition to federal law protections, in 1994 California enacted its own fair housing legislation.³ This state’s law explicitly prohibits discriminatory “public or private land use practices, decisions and authorizations” including, but not limited to, “zoning laws, denials of use permits, and other [land use] actions . . . that make housing opportunities unavailable” to people with disabilities.⁴

Sec. 2. Definitions

Disability. The Act protects any of the following: an individual with a physical or mental impairment that substantially limits one or more major life activities; anyone who is regarded as having any such impairment or; anyone who has a record of having such an impairment.⁵

The Act protects individuals in recovery from drug or alcohol abuse.⁶ However, individuals currently using illegal substances are not protected under the law, unless they have a separate disability.

The protections afforded people with disabilities under the Act extend to those who are associated with them, including providers and developers of housing for people with disabilities.⁷

Note that for the purposes of these Regulations, the term “handicap” and “disability” and any derivative of these terms, shall have the same meaning as the term “handicap” in the Fair Housing Amendments Act.

Sec. 3. Notice to the Public of Availability of Accommodation Process

Under the Act, a jurisdiction has an affirmative duty to make reasonable accommodations in rules, policies, practices and procedures where accommodation may be necessary to ensure that people with disabilities have equal access to housing.⁸ By providing the public with notice of the availability of its procedure for requesting accommodation, the jurisdiction takes an affirmative step in accordance with the federal mandate to make accommodation available to people with disabilities.⁹ To reach all individuals who may need to request accommodation, notice should be posted in all departments where decisions are made regulating the siting, funding,

development and use of housing. Accommodation request forms should be available in those same departments. Both a notice for posting and an accommodation request form, for a jurisdiction's use, are included with the regulations governing requests for accommodation. (Exhibits A and B.)

Sec 4. Requesting Reasonable Accommodation

Note: The imposition of a fee for requesting reasonable accommodation or, appealing an adverse decision on a request, is contrary to the Act.¹⁰

- A. A request for accommodation may be made by any individual for the purpose of making specific housing available to individuals with disabilities. For example, a reasonable accommodation request may be made by an individual with a disability, a family member or friend of a person with a disability, or a developer of housing for people with disabilities.
- B. The process for making a reasonable accommodation request must be accessible to an individual with a disability. Therefore, the department must provide assistance necessary to an individual who needs help in requesting accommodation and offer flexibility in the procedure set forth in the Regulations. For example, the department might record on the application form information provided by an individual who because of a disability is unable to complete the form alone.
- C. The Regulations provide flexibility in the time to request an accommodation because unforeseen circumstances often arise in the approval process for the siting, funding, development or use of housing. For example, a developer seeking initial approval of building plans for housing specifically designed for people with disabilities might need an accommodation on a side yard requirement. Or, a project already approved may need to be modified to accommodate an additional change due to state licensing requirements.

Sec. 5. Review of Requests for Reasonable Accommodation

- A. This section outlines the time frame for review, consideration and issuance of a written decision by the designee. The term "designee" is used because each jurisdiction will have to determine who in the jurisdiction will make determinations on requests for reasonable accommodation. In selecting the designee(s), a jurisdiction should consider the following: (1) individuals knowledgeable in both land use and zoning and fair housing issues; (2) a decision making system that will further timely review and issuance of written decisions on requests for accommodation and; (3) the relationship, if any, between the designee and an appeals designee. Possible choices for a designee include planning department personnel, the city attorney or some combination of the two to act as a team in the decision-making process. Small jurisdictions with limited personnel may have requests for accommodation go directly to the planning or zoning administrator for review and determination.
- B. The designee may request additional information necessary for making a determination on the request for reasonable accommodation that does not conflict with the Act and privacy rights of the individual with a disability to use the specific housing. For example, questions as to why the requested accommodation is necessary or what, if any, land use impact would result from granting the accommodation are within the legal scope of inquiry under the Act. Inquiries seeking information as to the nature, extent or severity of a disability are contrary to fair housing laws and privacy rights.¹¹

- C. If the designee requests additional information consistent with the Act from the applicant, the 30-day time period for making a determination on the request stops running until the additional information is provided to the designee. This procedure is intended to expedite the information gathering process and facilitate the issuance of a timely decision by the designee. It is in the best interest of the applicant seeking accommodation to provide the requested information as soon as possible to obtain a speedy decision.

Sec. 6 Factors for Considering Requests for Reasonable Accommodation

Factor 1: Is the housing, which is the subject of the request for reasonable accommodation, to be used by an individual protected under the Act?

An individual is protected under the Act if he or she meets the definition of disability set forth in Sec. 2, above.^{1 2} Additionally, if the specific housing is for people with disabilities, this prerequisite is met.

Factor 2: Is the request for accommodation necessary to make specific housing available to an individual protected under the Act?

Under the Act, cities and counties have an affirmative duty to provide individuals with disabilities reasonable accommodations to “rules, policies, practices, or services, when such accommodation may be necessary to afford such persons equal opportunity to use and enjoy a dwelling. . .”^{1 3} Whether an accommodation is necessary requires a “fact-specific inquiry regarding each such request.”^{1 4} Failure to make reasonable accommodation is a violation of the Act.^{1 5}

Factor 3: Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction?

Once an individual establishes that an accommodation is necessary for equal access to housing, then the jurisdiction must provide the requested accommodation unless they present evidence that granting the accommodation would impose an undue financial or administrative burden on the jurisdiction.^{1 6} Here again, the analysis is a fact-specific inquiry. If the jurisdiction establishes an undue burden, then the accommodation is not reasonable and should not be granted by local government. In the land use and zoning context, many requests for accommodation will be a request to modify or waive a regulation or procedure. It costs a jurisdiction nothing to waive a rule, meaning that “. . . the accommodation request amounts to nothing more than a request for non-enforcement of a rule.” In those instances, a jurisdiction would not be likely to demonstrate undue burden.^{1 7}

Factor 4: Whether the requested accommodation would require a fundamental alteration in the nature of a program?

In addition to not imposing an undue financial or administrative burden, a reasonable accommodation must also not result in the fundamental alteration in the nature of a program.^{1 8} “Fundamental alteration” has been defined as, “(1) a substantial change in the primary purpose or benefit of a program or activity; or (2) a substantial impairment of necessary or practical components required to achieve a program or activity’s primary purpose or benefit.”^{1 9} In the land use and zoning context, “fundamental alteration in the nature of the program” means an alteration so far reaching that it would change the essential zoning scheme of a municipality. The case law indicates that in most instances granting a request to modify or waive a zoning policy or procedure, does not

result in a fundamental alteration in the nature of a program.^{2 0}

Sec. 7. Written Decision on the Request for Reasonable Accommodation

- A. The designee's written decision is to be based on a consideration of the four factors set forth in the preceding section. The designee shall not rely on discriminatory stereotypes.^{2 1}
- B. This provision encourages prompt decision-making on requests for reasonable accommodation as delays in the development process may increase costs or even jeopardize the future of a project.

Sec. 8 Appeals

- A. An individual denied a reasonable accommodation request has 30 days from the date of the decision to file an appeal. An appeals form is provided for the jurisdiction's use (Exhibit D).
- B. As with the filing of the original appeal, the Department must make all necessary efforts to ensure that the appeals process is accessible to individuals with disabilities. An individual with a disability may request flexibility in the appeals process including modifying or waiving certain procedures which the individual cannot satisfy because of a disability. For example, an individual may request a face to face meeting with the appeals designee in order that he or she may better explain the need for the accommodation. Or, an individual may want to submit new information explaining the need for the requested accommodation at the appeals stage because the applicant was unable to obtain the information at the time of the original request.
- C. The statement of the grounds for appeal is necessary for the appeals designee to review the appeal and reconsider the individual's request for accommodation.
- D. The jurisdiction's administrative procedure for requesting accommodation and the appeals process in no way limits an individual's right to any other available remedy including, but not limited to, filing a complaint with the Department of Housing and Urban Development, the state Fair Housing and Employment Department or commencing an action in state or federal court.

¹ 42 U.S.C. §§ 3601 et seq. The analysis in these guidelines is based on the Fair Housing Amendments Act of 1988. Two other significant federal anti-discrimination laws offer protection against discrimination to people with disabilities, including land use and zoning activities. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability in any program or activity that is conducted by the federal government or that receives federal financial assistance. The Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq., prohibits discrimination against individuals with disabilities in a number of areas, including all public services – irrespective of federal financial assistance. Both § 504 and the ADA require reasonable accommodation and the accommodation analysis under these federal laws is very similar to that of the Fair Housing Act.

² The federal regulations that implement the Fair Housing Amendments Act state that its fundamental purpose is to prohibit practices that "restrict the choices" of people with disabilities to live where they wish or that "discourage or obstruct choices in a community, neighborhood or development. 24 C.F.R. § 100.70(a)(1994). The legislative history is precise in identifying discriminatory land use practices:

The Act is intended to prohibit the application of restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

54 Fed. Reg. 3246 citing House of Representatives Report No. 100-711, 100th Congress, 2d Session at 24.

³ Government Code §§ 12900 et seq.

⁴ In a statement of legislative intent that accompanied the amendments, the following findings were made:

- a. That public and private land use practices, decisions, and authorizations have restricted, in residentially zoned areas, the establishment and operation of group housing, and other uses
- b. That people with disabilities. . . are significantly more likely than other people to live with unrelated people in group housing.
- c. That this act covers unlawful discriminatory restrictions against group housing for these people.

Stats. 1993 ch 1277, § 18 (emphasis added).

⁵ 42 U.S.C. § 3602(h); 24 CFR § 100.201.

⁶ 24 C.F.R. § 100.201. See *United States v. Southern Management Corp.*, 955 F.2d 914 (4th Cir. 1992); *Oxford House v. Town of Babylon*, 819 F.Supp.1179 (E.D.N.Y. 1993).

⁷ See *Judy B. v. Borough of Tioga*, 889 F.Supp. 792 (M.D. Pa 1995) (a person who is not himself handicapped, but who is prevented from providing housing for handicapped persons by a municipality's discriminatory acts, has standing to sue under the Act); *Epicenter of Steubenville, Inc. v. City of Steubenville*, 924 F.Supp. 845 (S.D. Ohio 1996) (operators of adult care facilities have standing to challenge a city's moratorium on new facilities where the operator couldn't get a permit and thus was prevented from opening a new facility); *Simovits v. Chanticleer Condominium Ass'n*, 933 F.Supp. 1394 (N.D. Ill. 1996) (a fair housing agency may sue under the Act if it shows deflection of the agency's time and money from counseling to legal efforts directed against discrimination).

⁸ 42 U.S.C. § 3604(f)(3)(B). *Turning Point, Inc. v. City of Caldwell*, 74 F. 3d 941 (9th Cir. 1996) (cities have an affirmative duty to provide reasonable accommodation). Additionally, the opportunity to obtain a variance is not a reasonable accommodation because the process is an excess burden not imposed on others. See *Horizon House v. Township of Upper Southampton*, 804 F.Supp. 683 (E.D. Pa. 1992) aff'd mem., 995 F.2d 217 (3d Cir. 1993); *Oxford House v. Township of Cherry Hill*, 799 F.Supp. 450 (D.N.J. 1992).

⁹ The Department of Housing and Urban Development (HUD) has promulgated regulations under both § 504 of the Rehabilitation Act of 1973 and the Fair Housing Act that require a notice of rights under federal law. Under § 504, which is looked to for interpretation of the Fair Housing Act, HUD requires "initial and continuing steps to notify program participants, beneficiaries, applicants" . . . of its policy of nondiscrimination under the law. 24 CFR § 8.54. Under Fair Housing regulations, HUD requires that a fair housing poster be displayed at any place of business where a dwelling is offered for sale or rent, real estate-related transactions are conducted and brokerage services are provided to the public. 24 CFR § 110.10. Additionally, under federal assisted housing programs, HUD requires notice of the availability of reasonable accommodation at the time of the prospective tenant's application interview for housing and in any written letter of rejection. Handbook 4350.3, par. 12-23j; par. 12-30c.

¹⁰ Requiring a fee for requesting an accommodation is analogous to the burden imposed on an individual with a disability who is required to apply for a variance. As indicated in note 8, above, the variance process has been rejected, in part because it is a costly burden that is not similarly imposed on other persons.

Reasonable accommodation means changing some rule that is generally applicable to everyone so as to make its burden less onerous on the handicapped individual. . . Here defendant's suggestion that making the process of applying for a C.O. more onerous for plaintiffs than it is for the majority of applicants, somehow constitutes a "reasonable accommodation," stands the concept on its head. It is analogous to arguing that a rule requiring only handicapped people to pay a special fee before entering a building constitutes a reasonable accommodation.

Oxford House v. Township of Cherry Hill, 799 F.Supp. at 462, note 25; see also *Alliance For Mentally Ill v. City of Naperville*,

923 F.Supp. 1057 (N.D. Ill. 1996).

¹¹ See *Cason v. Rochester Housing Authority*, 748 F.Supp.1002 (W.D.N.Y.1990)(inquiry as to whether an applicant has the “ability to live independently” is contrary to the Fair Housing Act). The scope of inquiry made to prospective tenants of HUD housing is as follows:

It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such person.

24 CFR § 100.202. See also the discussion of factors for considering requests for reasonable accommodation , Sec. 6, *infra*.

¹² The Fair Housing Amendments Act of 1988 specifically adds persons with disabilities

¹⁰ the list of those protected by federal fair housing laws.

¹³ See note 8.

¹⁴ *U.S. v. California Mobile Home Park Management Co.*, 29 F.3d 1413 (9th Cir. 1994); Department of Justice Memorandum to National League of Cities, March 4, 1996 at 6.

¹⁵ *Oxford House-C v. City of St. Louis*, 843 F.Supp. 1556 (E.D. Mo. 1994) (forcing a group home to use the variance process was not a reasonable accommodation where compliance would have a discriminatory effect and the process, which required a public hearing and notice, stigmatized the prospective residents, increased their stress and evidence showed that any attempt to obtain a variance would be futile); *United States v. City of Philadelphia*, 838 F.Supp. 223 (E.D.Pa. 1993), *aff’d w/o opinion*, 30 F.3d 1488 (3d Cir. 1994) (the City of Philadelphia violated the Act by refusing to allow substitution of a side yard for the zoning requirement that a building have a rear yard for a home for chronically homeless people with mental disabilities); *Oxford House v. Babylon*, 819 F.Supp.1179 (E.D.N.Y. 1993) (group home established as reasonable their request that the town accommodate them by modifying its interpretation under the ordinance of the term “family”); *Parish of Jefferson v. Allied Health Care, Inc.*, C.A. No.91-1199, (E.D.La., June 10, 1992), 1992 WL 142574 (E.D. La.1992) (allowing six individuals with mental retardation to reside in a dwelling was a reasonable accommodation to a zone restricting single family dwellings to a maximum of four unrelated persons).

¹⁶ The “undue financial or administrative burden” standard for determining whether an accommodation is reasonable under the Fair Housing Act is borrowed from case law interpreting Section 504 of the Rehabilitation Act. *Southeastern Community College v. Davis*, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed. 2d 980 (1979); H.R. Rep.No.711, 100th Cong.,2d Sess. 25 (1988).

¹⁷ *Proviso Ass’n v. Village of Westchester*,914 F.Supp. 1555 (N.D. Ill. 1996).

¹⁸ The “fundamental alteration” test, like “undue financial or administrative burden,” derives from Section 504 of the Rehabilitation Act and is also explained in *Southeastern Community College v. Davis*, 442 U.S. 397. See note 16.

¹⁹ Robert Burgdorf, “Equal Access to Public Accommodations,” in West, Jane, ed., *The Americans with Disabilities Act, From Policy to Practice*, Milbank Memorial Fund (1991), p.190. Elaborating on what constitutes a fundamental alteration, Professor Burgdorf explains:

Lower court have further outlined the concept: reasonable accommodations are not mandated if they would endanger a program’s viability; massive changes are not required; nor are modifications that would ‘jeopardize the effectiveness’ of the program or would involve a ‘major restructuring’ of an enterprise; and modifications that would so alter an enterprise as to create, in effect, a new program are not required.

²⁰ *U.S. v. City of Taylor*, 872 F.Supp. 423 (E.D. Mich. 1995); *U.S. v. City of Taylor*, 798 F.Supp. 442 (E.D. Mich. 1992) and *Smith & Lee Assoc. v. City of Taylor*, 13 F.3d 920 (6th Cir. 1993)(rehearing and suggestion for rehearing En Banc denied March 11, 1994) (allowing a 12-person adult foster care home to locate in a single family residential zone is fundamentally consistent with the single family uses surrounding the proposed home and would not constitute an undue burden or a fundamental alteration of the city’s master plan); *Martin v. Constance*, 843 F.Supp. 1321 (E.D. Mo. 1994)(it would be neither an undue burden nor undermine the basic purpose of maintaining the residential character of a neighborhood to not enforce a restrictive covenant against a state operated home for individuals with developmental disabilities); *Oxford House v. Babylon*, 819 F.Supp. 1179 (E.D.N.Y. 1993) (modifying city’s interpretation under the ordinance of the term “family” was reasonable where the group home had no adverse effect on the residential character of the neighborhood and neither the operation of the group home nor the residents caused any financial or administrative burdens on the town); *United States v. Marshall*, 787 F.Supp. 872 (W.D. Wis. 1992) (granting a variance under state law to allow a group home for people with mental disabilities to locate within 2500 feet of a group home for the elderly would not “undermine the basic purpose which the requirement seeks to achieve” where the

homes would not be separated by a wide portion of a river with no bridge connection).

²¹United States v. Borough of Audubon, 797 F.Supp. 353 (D.N.J. 1991) aff'd 968 F.2d 14 (3d Cir. 1992) (the Court sanctioned the Borough and permanently enjoined it from interfering with the living arrangements of the residents of the home and held that when acts are undertaken with improper discriminatory motive, the Act may be violated even though those acts may have otherwise been justified under state law); A.F.A.P.S. v. Regulations & Permits Admin., 740 F.Supp. 95 (D.P.R. 1990) (the denial of an application for a special use permit to operate a residence for persons with AIDS violated the Act where the intent and effect of the denial discriminated against AIDS patients and the asserted reason for the denial was pretextual).